UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRIAN GEORGE PERKS,

              Plaintiff,

    v.

SLI TECHNOLOGIES, INC. DBA
ADAPT and DBA SALES LIFT,

              Defendant.

No.   2:20-cv-00095-SMJ

ORDER DENYING MOTION TO STRIKE AND DENYING MOTION FOR DEFAULT JUDGMENT WITH LEAVE TO RENEW

Before the Court, without oral argument, are Plaintiff Brian George Perk's Motion for Default Judgment, ECF No. 3, and Motion to Strike Defendant's Answer, ECF No. 4. Plaintiff seeks entry of default judgment against Defendant SLI Technologies, Inc. Having reviewed the motions and the file in this matter, the Court is fully informed and denies both motions for failure to comply with the Local Civil Rules, with leave to renew.

As a preliminary matter, the Court construes Plaintiff's Motion to Strike Defendant's Answer as a second motion for default judgment. A motion to strike is appropriate where a pleading contains "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Here, Plaintiff

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1 sought to preemptively strike any potential answer that could be filed, regardless of

2 its contents, on the basis of Defendant's failure to appear. *See* ECF No. 4. Plaintiff

3 makes no allegations regarding the contents of the Answer, nor could he have done

4 so because no answer had been filed at the time of his motion. As such, Plaintiff's

5 motion to strike is properly construed as a second motion for entry of default. *See*

6 *McMillen v. J.C. Penney Co.*, 205 F.R.D. 557, 558 n.1 (D. Nev. 2002) (construing

7 motion to strike as motion for default judgment where plaintiff moved to strike

8 answer as untimely).

9   Having construed Plaintiff's Motion to Strike as a second motion for default

10 judgment, the Court finds neither motion complies with the Local Civil Rules.

11 Plaintiff filed a "Motion for Entry of Default for No Answer No Appearance and

12 Failure to Provide Evidence" on the same day he filed the instant Motion for Default

13 Judgment and Motion to Strike Defendant's Answer. ECF Nos. 2, 3 & 4. On

14 April 15, 2020, Plaintiff filed a "Memorandum Notice to Defendant Seeking Entry

15 of Default" indicating he had mailed a "Notice to seek Entry of Default document"

16 to Defendant on April 14, 2020. ECF No. 7. On April 22, 2020, Plaintiff filed a

17 "Memorandum and Declaration of Notice to Defendant Seeking Entry of Def[au]lt"

18 indicating that he had served a copy of the motion seeking entry of default on

19 Defendant on April 3, 2020. ECF No. 8. Plaintiff further indicated that a period of

20 fourteen days had elapsed since service of the notice to Defendant and that

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1   Defendant had not appeared or otherwise answered the Complaint. *Id.* at 2. The

2   Clerk of Court entered Default against Defendant on April 23, 2020. ECF No. 9.

3   Local Civil Rule 55(b)(1) states, "No motion for default judgment shall be

4   *filed* unless an order of default has been entered by the Clerk of Court."

5   LCivR 55(b)(1) (emphasis added). On April 8, 2020, when Plaintiff filed the above

6   motions, default had not yet been entered and a motion for default judgment was

7   premature. As such, both motions are denied for failure to comply with the Local

8   Civil Rules. Because Default has now been entered against Defendant, Plaintiff is

9   granted leave to renew in accordance with the local rules.

10   Accordingly, **IT IS HEREBY ORDERED**:

11   **1.**   Plaintiff's Motion for Default Judgment, **ECF No. 3**, and Motion to

12   Strike Defendant's Answer, **ECF No. 4**, are **DENIED** with leave to

13   renew.

14   **2.**   If Plaintiff files a renewed motion, he should file a single motion

15   seeking default judgment.

16   **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and

17   provide copies to *pro se* Plaintiff and counsel for Defendant.

18   **DATED** this 6th day of May 2020.

19

20   _____
     SALVADOR MENDOZA, JR.
     United States District Judge

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